

# SENATE BILL REPORT

## SB 5559

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As of February 24, 2017

**Title:** An act relating to implementing a vulnerable youth guardianship program.

**Brief Description:** Implementing a vulnerable youth guardianship program.

**Sponsors:** Senators Darneille, Saldaña, Hasegawa, Wellman, Cleveland, Palumbo, Keiser, McCoy, Chase and Kuderer.

**Brief History:**

**Committee Activity:** Human Services, Mental Health & Housing: 2/06/17, 2/14/17 [DPS, DNP].

**Ways & Means:** 2/22/17.

### Brief Summary of Bill

- Creates a vulnerable youth guardianship as new legal action, without a filing fee, authorizing the court to appoint a guardian for a consenting vulnerable youth for purposes of Special Immigrant Juvenile (SIJ) status and an application for a green card.
- Authorizes Washington's juvenile courts to find that the vulnerable youth is abandoned, neglected, or abused, unmarried, and unable to reunite with their parents, and qualified by age for SIJ status.
- Retains all legal rights afforded an adult under Washington's laws for the vulnerable youth and does not consider the vulnerable youth as a child for any state law purpose.
- Requires a criminal background check for potential guardians.

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### SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

**Majority Report:** That Substitute Senate Bill No. 5559 be substituted therefor, and the substitute bill do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Carlyle, Hunt and Walsh.

**Minority Report:** Do not pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senator Padden.

**Staff:** Melissa Burke-Cain (786-7755)

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**SENATE COMMITTEE ON WAYS & MEANS**

**Staff:** Julie Murray (786-7711)

**Background:** In 1990, Congress created the SIJ status. In 2008, the Trafficking Victims Protection and Reauthorization Act made changes to the eligibility requirements for SIJ status and streamlined certain SIJ procedures. The SIJ status is designed for non-U.S. citizen children in the United States who do not have a permanent residence. The program protects an undocumented, unmarried immigrant under 21 years of age from deportation if specific state court action occurs and a state court order makes specific findings regarding the child.

Foreign born children in the United States under 21 years of age, who are abused, abandoned, or neglected, are unmarried, and are unable to reunite with a parent, qualify for the federal SIJ program. The SIJ program authorizes the child to get a green card and permanent resident status in the United States. A child who gets a green card through the SIJ program can never petition for a green card for their parents and cannot petition for a green card for a sibling until the SIJ child becomes a U.S. citizen. A foreign born child is not eligible for the SIJ program without an order from a state court with jurisdiction over the care and custody of children. In its order, the state court must find:

- the child a dependent of the court, or must place the child in a state agency's custody or the custody of a private agency or private person;
- it is not in the child's best interests to be returned to their home country or their last country of residence; and
- the child cannot be reunited with a parent because of any of the following reasons: abuse, abandonment, neglect, or a similar state law-specific reason.

The federal SIJ law allows a person under 21 years of age to qualify for SIJ status. However, immigrant children in Washington State have not been able to qualify for the SIJ program because Washington's juvenile courts have generally been unable to take jurisdiction of these children since Washington's jurisdiction over dependent children is very limited after a child turns 18 years of age. Therefore, children who may otherwise qualify for SIJ status under the federal law have not been able to obtain this status in Washington.

**Summary of Bill (First Substitute):** The juvenile division of Washington's superior court is authorized to appoint a guardian upon the petition of a consenting, undocumented vulnerable youth between 18 and 21 years of age. A vulnerable youth guardian is not a dependency guardian appointed pursuant to a dependency case under state dependency laws. A vulnerable youth is a person who is eligible for SIJ status and defined by the federal SIJ law as a child, but is not otherwise considered a child under any Washington State law or for any other state law purpose. The potential guardian must have a criminal background check. The guardian must receive notice of the petition, must agree to join the petition as a party, and must agree to their appointment as guardian of a vulnerable youth. The proposed guardian must be over 21 years of age, capable of performing guardianship duties, and suitable to act as guardian. The court must make findings that the petitioner has been abused, neglected, or

abandoned, is unmarried, and is unable to reunite with a parent in order to appoint a guardian. The Washington court is authorized to make findings and determinations regarding the custody and care of the vulnerable youth petitioning for a guardian upon prima facie evidence that the petitioner qualifies as a neglected, abused, or abandoned child under the federal Immigration and Nationality Act and the SIJ program. Filing the petition does not require payment of a filing fee. The court may identify the services the guardian will perform in the order and designate when additional hearings to provide court oversight of the guardianship are required. The guardian must not take away or retain the individual's identity documents. The Washington State Task Force on the Trafficking of Persons must evaluate and recommend whether there should be a pre-guardianship interview. If a pre-guardianship interview is recommended the taskforce must recommend the content of the interview and any training that an interviewer should have in order to be an interview panel member.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE (First Substitute):**

- Requires a criminal background check for a proposed guardian.
- Prohibits the guardian from possessing or retaining the youth's identity documents.
- Requires the Task Force on Trafficking of Persons to evaluate the value of an interview prior to appointment of a guardian, to recommend the content of interview, and to suggest interviewer training.

**Appropriation:** None.

**Fiscal Note:** Requested on February 3, 2017.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Human Services, Mental Health & Housing):** *The committee recommended a different version of the bill than what was heard.* PRO: There is a strong list of many supporters for this bill. This is an opportunity to align our state laws with a federal program. This is a binary process in which there first must be a state guardianship and then the application process for the Special Immigrant Juvenile designation at the federal level. These individuals are able to stay here in the U.S. where they otherwise might be deported back to a very bad situation. This bill would give the individuals an opportunity for development, education, and safe future they might not otherwise have. California, Maryland, and New York have this guardianship in place. Other states do not need to have this programs because the existing family law or foster care systems go up through age 21. There needs to be a way to protect the youth from traffickers becoming the guardian and manipulating the youth. Protection from traffickers is a missing piece in the bill, but if this potential risk of a trafficker being appointed as the guardian is addressed I would support the bill.

CON: There should be some changes in the proposal because youth who have predisposed trauma, abuse, and neglect and also must adjust to a new language and culture as immigrants

to this country are vulnerable to potential traffickers. The youth is supposed to come forward with a guardian to the court. A trafficker could exploit the youth into being appointed as his or her guardian. A trafficker might not let a youth come to the court for modification. A pre-screened guardian should be available. There should be a baseline standard for the guardian's duties, some form of regular court supervision, and the youth should have their identity papers in their control at all time.

**Persons Testifying (Human Services, Mental Health & Housing):** PRO: Senator Darneille, Prime Sponsor, Lindsay Lennox, Northwest Immigrant Rights Project; Sherwood Sage; Mary van Cleve, Columbia Legal Services; Jeri Moomaw, Innovations HTC.

CON: Julia Anderson.

**Persons Signed In To Testify But Not Testifying (Human Services, Mental Health & Housing):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: Bringing this bill forward is a good way to work with youth and young adults who are highly abused; this would align our state law with federal regulations that allow states to establish these kinds of guardianships. This legislation is very important and necessary for young individuals who have been abused, neglected, trafficked or otherwise left abandoned in our society.

**Persons Testifying (Ways & Means):** PRO: Senator Darneille, Prime Sponsor.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.